

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1616 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

BHAGWATILAL HASUMKLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR PR NANAVATI for Petitioner

Mr. U.R. Bhatt, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 02/05/98

ORAL JUDGEMENT

The petitioner is arrested and kept under detention pursuant to the order of detention dated 13th October 1997. The order was passed by District Magistrate, Surat invoking his powers under Section 3 (2) of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980. By this application the petitioner challenges the legality and validity of the detention order.

2. The petitioner runs the fair-price shop obtaining necessary licence. The supply officer had the information that the petitioner was not selling kerosene or sugar to the card-holders periodically but was diverting the quota he was receiving to the blackmarketeers. He was thereby earning huge profits, as a result the people for whose benefit the Government was supplying the quota had to undergo hardship and suffer miseries and woes. The shop of the petitioner was raided on 16th November 1997. Several irregularities and ongoings were found. The bills were not correctly prepared, the stock-register was also not maintained. The records and bills incompletely prepared were misleading. False bills were also prepared so as to misguide and cause the officers to believe that the kerosene and sugar were sold to the cardholders and there was no malpractice. Thereafter detailed enquiry was held, and several statements of the cardholders were recorded. It was noticed that committing the breach of the terms and conditions of the licence issued, the petitioner getting the quota was diverting the same for profiteering motive and encouraging the black-economy. The people and especially the poor people who were to get kerosene and sugar at the fair-price had to undergo hardships and bear grief & plight in helplessness. In order to curb such black economy of the petitioner strict action was required. The District Magistrate, Surat, found that any action if taken under general law would yield no result. The only way out was to pass the impugned order and detain the petitioner. Accordingly, the order came to be passed and the petitioner at present is kept under detention.

3. On several grounds Mr. Nanavati, the learned advocate representing the petitioner has assailed the order, but during the course of his submission after I made certain queries he tapered off his submissions confining to the only point namely right of the petitioner was jeopardised for want of legible copies. According to him, the petitioner had a right to know the grounds on which he is arrested and detained. No doubt, the detaining authority has supplied the documents but all the documents are not legible. It is therefore not possible for the petitioner to know what are the allegations against him and what is the defence available to him. For want of legible copies he is also not in a position to make effective representation. When thus he has been deprived of exercising his right to make effective representation, the continued detention may be held to be illegal.

4. In reply to such contention, Mr. U.R. Bhatt, learned AGP for the State submitted that to the extent possible legible copies are supplied, but to have the order of his choice the petitioner has without any base assailed the detention on that ground. He at this stage tenders the affidavit-in-reply sworn-in by Mr. P.D. Shah. The same is taken on record.

5. It is the cardinal principle of law that, when a person is detained without any trial the detaining authority has to supply the copies of the documents and disclose what are the grounds to detain him so that the detenu can study the papers and make effective representation and point out how the case against him is not reliable. The authority has therefore to furnish legible copies. If any of the part of the document is not legible, the right to make effective representation will be jeopardised and continued detention will be illegal and unconstitutional. In this case, I perused the bunch of the documents provided to the petitioner and could see that several documents are partly legible and partly illegible. It is not possible to know in full what are the grounds of detention. As the copies are not legible, the petitioner's right to make effective representation is jeopardised. Therefore on that count, the continued detention must be held to be unconstitutional and illegal.

6. For the aforesaid reasons, the application is allowed. The order of detention dated 13th October 1997 is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith if not required in any other case. Rule accordingly made absolute.

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(rmr).